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Attorneys for Plaintiff and the Aggrieved Employees

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

KENDRA STAEDLER, individual, on behalf of the State of California, as private attorney general, and on behalf of all aggrieved employees,

Plaintiff,

v.

SSA GROUP, LLC, a Colorado limited liability company; and DOES 1 to 100, inclusive

Defendants.

CASE NO: **CGC-23-605725**

REPRESENTATIVE ACTION COMPLAINT FOR:

Penalties Pursuant to Labor Code § 2699, *et seq*. for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, as well as the IWC Wage Order

Plaintiff Kendra Staedler ("Plaintiff"), on behalf of the people of the State of California and as an "aggrieved employee" acting as private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2699, *et seq*. ("PAGA") complains of Defendants SSA Group, LLC ("SSA" and/or "Defendant"), and DOES 1 to 100 (collectively "Defendants") and each of them, as follows:

OVERVIEW OF CLAIMS

1. This is an individual and representative action brought pursuant to Labor Code § 2699, *et seq*., on behalf of the State of California and the groups of aggrieved employees defined as follows:

a. all individuals who are or were employed by Defendant or its predecessor or merged entities in California in an hourly, non-exempt position, who were not provided with duty-free meal periods, from January 9, 2022 through the present ("meal period aggrieved employees");

b. all individuals who are or were employed by Defendant or its predecessor or merged entities in California in an hourly, non-exempt position, who worked shifts in excess of three and a half hours, from January 9, 2022 through the present ("rest period aggrieved employees");

c. all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees, who work or worked in excess of eight hours in a day or forty hours in a workweek from any time from January 9, 2022 through the present ("overtime aggrieved employees");

d. all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who are or were required to spend business expenses without sufficient reimbursement for their expenses from January 9, 2022 through the present ("reimbursement aggrieved employees");

e. all individuals who are or were employed by Defendant, or its predecessor or merged entities in California in an hourly, non-exempt position, who were not provided with accurate wage statements from January 9, 2022 through the present ("wage statement aggrieved employees");

f. all individuals who are or where employed by Defendant or its predecessor or merged entities in California in an hourly, non-exempt position, and who were paid more than seven days after the close of payroll for that time between January 9, 2022 through the present, ("late payment aggrieved employees");

g. all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who were not paid their wages at the time of termination or within seventy-two (72) hours of their resignation and have not been paid those sums for thirty (30) days thereafter, from January 9, 2022 through the present ("waiting time aggrieved employees");

h. all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who requested for copies of their personnel file from Defendant but were not provided with the same from January 9, 2022 through the present ("personnel file aggrieved employees"); and

i. all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who requested for copies of their time and wage records from Defendant but were not provided with the same from January 9, 2022 through the present ("time and wage records aggrieved employees").

Collectively referred to as the "Aggrieved Employees."

2. Plaintiff, on behalf of herself and all aggrieved employees presently or formerly employed by Defendants during the liability period, bring this representative action pursuant to Labor Code § 2699, *et seq*. seeking penalties for Defendants' violation of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, as well as the IWC Wage Order**.** Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2699, *et seq*.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over any and all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds $25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

4. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of San Francisco and State of California through their acts, and by their violation of the California Labor Code and California state common law.

5. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendants operate within California and does business within San Francisco County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all "employees" within the State of California and San Francisco County.

THE PARTIES

A. The Plaintiff

6. Plaintiff Kendra Staedler is a resident of California and at all times pertinent hereto worked for Defendants in San Francisco County.

7. Plaintiff and all aggrieved employees are, and at all times pertinent hereto, have been hired by Defendants to work in California.

8. Plaintiff represents the State of California as well as the nine groups of aggrieved employees described in paragraph 1, above.

B. The Defendants

9. Defendant SSA Group, LLC is a Colorado limited liability company based in Denver, Colorado. SSA provides integrated food, retail and ticketing solutions to cultural attractions across the nation including in the State of California. Defendant contracts with employees such as Plaintiff and the aggrieved employees to provide various services to its customers, all within the County of San Francisco.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the aggrieved employees.

12. California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any

person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person. Cal. Labor Code §§558 and 558.1.

FACTUAL ALLEGATIONS

13. Plaintiff and the aggrieved employees are and were employed by SSA Group, LLC, a Colorado limited liability company based in Denver, Colorado. SSA provides integrated food, retail and ticketing solutions to cultural attractions across the nation.

14. In May 2019, Plaintiff was hired as a catering operations manager assigned to work in San Francisco, California. Plaintiff was paid a salary of $25 per hour.

15. Plaintiff and the aggrieved employees are scheduled to work for 40 hours per week. However, sometimes, Plaintiff and the aggrieved employees worked over 8 hours per day, amounting to around 5 hours of overtime work per week. Unfortunately, Defendant refused to pay Plaintiff and the aggrieved employees for overtime for the additional hours of work they did beyond the 8-hour time period.

16. Plaintiff and the aggrieved employees are also not given legally compliant meal and rest periods. Defendant required Plaintiff and the aggrieved employees to remain on-call during their breaks. No second meal break was provided either when Plaintiff and the aggrieved employees worked beyond 10 hours. As a result, Plaintiff and the aggrieved employees' meal and rest periods were constantly interrupted. In some cases, Defendant would alter the timesheets of Plaintiff and the aggrieved employees to make it appear that they took their breaks when in fact they did not. While Defendant asked Plaintiff to sign a meal waiver, Plaintiff refused to sign the same.

17. Defendant also required Plaintiff and the aggrieved employees to use their personal cellphones to communicate with each other regarding work-related matters. However, Defendant did not reimburse Plaintiff and the aggrieved employees' business expenses associated with the use of their personal phones for work communications.

18. On three separate instances (on or about September 19, 2022, October 24, 2022,

and November 29, 2022) Plaintiff, through her counsel United Employees Law Group ("UELG"), sent Defendants letters requesting for Plaintiff's personnel, timekeeping, and payroll records ("Requests"). To date, however, Plaintiff has yet to receive copies of her personnel, timekeeping, and payroll records from Defendants.

19. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the overtime aggrieved employees could not then agree and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

20. Plaintiff and the aggrieved employees are scheduled to work for 40 hours per week. However, sometimes, Plaintiff and the aggrieved employees worked over 8 hours per day, amounting to around 5 hours of overtime work per week. Unfortunately, Defendant refused to pay Plaintiff and the aggrieved employees for overtime for the additional hours of work they did beyond the 8-hour time period.

21. Because Plaintiff and the aggrieved employees spent eight hours or more working on "compensated" time, this uncompensated time for work done beyond eight hours per day should have been compensated at the overtime rate. Instead, no compensation was paid at all, in violation of Cal. Labor Code §§ 510, 1194, and the Wage Order. Plaintiff is an aggrieved employee for purposes of seeking penalties under PAGA.

22. Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. "An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break." (*Lubin v. The Wackenhut*

Corp. (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id*.

23. Generally, the DLSE and courts have "found that the nature of the work exception applies: '(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer." (*Id*. at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958-959.) "[I]t is the employer's obligation to determine whether the nature of the work prevents an employee from being relieved before requiring an employee to take an on-duty meal period." (*Lubin, supra*, 5 Cal. App. 5th at p. 946.) Nor may an employer "discharge its duty by arguing that its clients who requested on-duty meal periods determined that the nature of the work prevented officers from being relieved of all duty." (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.)

24. As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." The Brinker Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not-if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required-it has violated the wage order and is liable.

Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

25. As a result of its meal period policies requiring Plaintiff and the aggrieved employees to remain on premises and on-call during meal periods, Defendant violated Labor Code § 512 and the IWC Wage Order by failing to provide duty-free meal periods to Plaintiff and the aggrieved employees of 30 minutes or more. Most of the time, the Plaintiff and the aggrieved employees' meal periods were interrupted. Also, no second meal break was provided when Plaintiff and the aggrieved employees worked beyond 10 hours. In some cases, Defendant would alter the timesheets of Plaintiff and the aggrieved employees to make it appear that they took their

breaks when in fact they did not. While Defendant asked Plaintiff to sign a meal waiver, Plaintiff refused to sign the same.

26. Thus, Defendant unlawfully retained control of Plaintiff and the aggrieved employees during their meal periods, even though the nature of the work did not necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period agreements). See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that on-premises breaks violate California law). As a result of Defendant's failure to authorize or permit lawful meal periods, Plaintiff and the aggrieved employees frequently did not receive duty-free thirty-minute duty-free meal periods within the first five (5) hours of their work. Defendant also failed to pay Plaintiff and the meal period aggrieved employees meal period premiums for each workday that the employees did not receive a compliant meal period.

27. Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, the IWC Wage Order prohibits an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. The IWC Wage Order further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Accordingly, for each day that Plaintiff and the aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and the Wage Order.

28. Pursuant to Labor Code § 226.7, and the Wage Order, Defendant failed to provide Plaintiff and the other rest period aggrieved employees with duty-free rest periods of not less than ten (10) minutes for every major fraction of four hours worked.

29. Labor Code § 226. 7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Under the IWC

Wage Order, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

30. Defendant failed to implement a lawful rest period policy that informed Plaintiff and the aggrieved employees of their right to receive lawful rest periods for shifts greater than 3.5 hours. To the extent that Plaintiff and the rest period aggrieved employees could stop work during their shifts, they were nonetheless on-call, not allowed to leave the building, and were not provided with duty-free rest periods. See *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016) (holding that on-duty rest breaks violate California law).

31. Pursuant to Labor Code § 226.7 and the Wage Order, Defendant failed to provide Plaintiff and the rest period aggrieved employees with duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. The Brinker Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not-if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required-it has violated the wage order and is liable.

Brinker Rest. Corp. v. Sup. Ct., supra, 53 Cal.4th at 1033. (Emphasis added.)

32. Since Defendant did not offer employees the opportunity to receive a compliant off-duty ten minute rest periods, "the court may not conclude employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care*, (2015) 241 Cal. App. 4th 388, 410 ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); accord *Brinker Rest. Corp. v. Sup. Ct., supra*, 53 Cal.4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.").

33. Even an employer who maintains an otherwise compliant rest period policy, "reminded their employees of their availability-and the importance-of taking breaks on a daily basis, and even went so far as to conduct regular audits to ensure that employees were being offered rest breaks" will still be liable for rest period violations if the employees were not

separately or properly compensated for the non-productive time associated with rest periods under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc*., 2016 U.S. Dist. LEXIS 66842 (E.D. Cal. May 19, 2016) aff'd *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL 4440966, at 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. (9th Cir. Nov. 16, 2016).

34. In addition, Plaintiff and the rest period aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period.

35. Labor Code § 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

36. Due to Defendant's failure to pay Plaintiff and the aggrieved employees for all overtime and rest and meal period premiums, Defendant failed to timely pay the aggrieved employees within seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. See *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

37. As a result of Defendant's failure to pay wages to Plaintiff and the aggrieved employees for overtime and meal period minimum wages and meal/rest period premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

38. Due to Defendant's faulty policies described above, all aggrieved employees whose employment with Defendant concluded were not compensated at the appropriate rate.

Additionally, Defendant has failed to pay all aggrieved employees for all overtime, meal period premiums, and rest period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

39. Further, Defendant failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in accordance with Labor Code § 226(a) (1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

> (1) gross wages earned;
> (2) total hours worked by the employee;
> (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
> (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
> (5) net wages earned;
> (6) the inclusive dates of the period for which the employee is paid;
> (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
> (8) the name and address of the legal entity that is the employer…;
> (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee…

40. Due to Defendant's failure to provide Plaintiff and the Aggrieved Employees lawful meal and rest periods (and pay missed rest period premiums and overtime), the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

41. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the aggrieved employees.

42. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per

employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a). See *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at 7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at 6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.").

43. Defendant also required Plaintiff and the aggrieved employees to use their personal cellphones to communicate with each other regarding work-related matters. However, Defendant did not reimburse Plaintiff and the aggrieved employees' business expenses associated with the use of their personal phones for work communications.

44. Cal. Labor Code §2802 (a) provides that:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

45. Thus, employees such as Plaintiff and the Reimbursement Aggrieved Employees, are entitled to reimbursement for the expenses they incur during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own, and would be required to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 ("The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that

reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee.") After all, the purpose of 2802 is to "prevent employers from passing along their operating expenses onto their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal. 4th 554, 562.

46. Here, Defendants did not have a reimbursement policy for Plaintiff and the Reimbursement Aggrieved Employees for their reasonable and necessary business expenses. Thus, it is clear that not only did Plaintiff and the Aggrieved Employees incur expenses as a result of their employment, but that Defendants had a constructive knowledge of those expenses, and anticipating them, informed Plaintiff and the Aggrieved Employees that it would not provide any reimbursement. Therefore, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated § 2802 with respect to Plaintiff and the Aggrieved Employees.

47. Labor Code § 1198.5 provides as follows:

> (a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. …
>
> (k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars ($750) from the employer.
>
> (l) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action. …

48. As discussed above, Plaintiff, through her legal counsel, sent Defendants three requests for copies of her personnel records. The Requests were sent on or about September 19, 2022, October 24, 2022, and November 29, 2022. To date, however, Plaintiff has yet to receive copies of her personnel records from Defendants.

49. Due to their failure to provide Plaintiff with copies of her personnel records upon request, Defendants violated Labor Code § 1198.5.

50. Labor Code § 226 provides that:

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made. …

(f) A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar ($750) penalty from the employer. …

51. As discussed above, Plaintiff, through her legal counsel, sent Defendants three requests for copies of her time and wage records. The Requests were sent on or about September 19, 2022, October 24, 2022, and November 29, 2022. To date, however, Plaintiff has yet to receive copies of her time and wage records from Defendants.

52. Due to their failure to provide Plaintiff with copies of her time and wage records upon request, Defendants violated Labor Code § 226.

FIRST CAUSE OF ACTION
VIOLATIONS OF THE PRIVATE ATTORNEY GENERALS ACT OF 2004
[Labor Code § 2698, et seq.]
On Behalf of Plaintiff and the Aggrieved Employees Against All Defendants

53. Plaintiff, on behalf of herself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

54. Based on the above allegations incorporated by reference, Defendants have violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, as well as the IWC Wage Order.

55. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

$100 for the initial violation per employee per pay period; and

$200 for each subsequent violation per employee per pay period.

These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be 'stacked,' *i.e.,* multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations."); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

56. In addition, to the extent permitted by law, Defendants have failed to provide Plaintiff and all aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code §§ 226(a) and 226(e). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after Friant that "[t]o the extent the Court's Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiff's derivative claim for [PAGA] penalties under section 226(e)…the Court's Order should not be read to grant summary judgment on Plaintiff's claim for PAGA penalties based on violation of section 226(a)."]). For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiff and the aggrieved employees are entitled to recover penalties for violations of Labor Code § 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of Labor Code § 226(e).

57. In addition, as Defendants have failed to pay Plaintiff and the Aggrieved Employees on a weekly basis, and failed to pay Plaintiff and the Aggrieved Employees within seven days of the close of payroll, Plaintiff, the State of California, and the Aggrieved Employees are entitled to civil penalties pursuant to California Labor Code § 210. Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections…204…shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other late payment aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.

58. Pursuant to Labor Code § 2699.3 (a), on or about January 9, 2023, Plaintiff gave written notice by certified mail to Defendant, and to the LWDA of her claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, as well as the IWC Wage Order, and theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of her PAGA claims on herself and all other current and former Aggrieved Employees of Defendant.

59. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, as well as the IWC Wage Order.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and the Aggrieved Employees, pray for judgment against Defendants as follows:

1. <u>On the First Cause of Action</u>:

a. For penalties and other relief allowable under Labor Code § 2699, *et seq*. for Plaintiff and all aggrieved employees because of Defendants' violation of Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, as well as the IWC Wage Order;

b. A civil penalty against Defendants in the amount of $100 for the initial violation and $200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and all aggrieved employees for each and every pay period during that occurred between January 9, 2022 through trial;

c. A civil penalty against Defendants, pursuant to Labor Code § 1197.1 for the initial violation that is intentionally committed, in the amount of one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid and for each subsequent violation, two hundred fifty dollars ($200) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed, for Plaintiff and all aggrieved employees for each and every payperiod during that occurred between January 9, 2022 through trial;

d. A civil penalty against Defendants pursuant to Labor Code § 210 for the initial violation that is committed, in the amount of one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid and for each subsequent violation, two hundred dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid, for Plaintiff and all aggrieved employees for each and every payperiod during that occurred between January 9, 2022 and the date of judgment and/or approval of settlement;

e. A civil penalty against Defendants pursuant to Labor Code § 226.3 for the initial violation that is committed, in the amount of two hundred fifty dollars ($250) for the initial each inaccurate wage statement provided to Plaintiff and the Aggrieved Employees and for each subsequent violation, one thousand dollars ($1000) for each underpaid employee for each pay period for which the employee is provided an incomplete or inaccurate wage statement, for

Plaintiff and all aggrieved employees for each and every pay period during that occurred between January 9, 2022 and the date of judgment and/or approval of settlement;

f. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

g. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and the aggrieved employees' claims against Defendants as provided for in Labor Code § 2699(g)(1);

2. All other relief as this Court deems proper.

Dated: April 7, 2023

Respectfully,

POTTER HANDY LLP.

James Treglio

By: James M. Treglio
Counsel for Plaintiff and the Aggrieved Employees